

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROBERT MEDINA,

Petitioner,

v.

UNNAMED,

Respondent.

Case No.: 1:24-cv-01425 JLT SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS AND DIRECTING CLERK OF
COURT TO ENTER JUDGMENT AND
CLOSE CASE
(Doc. 5)

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Robert Medina is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The assigned magistrate judge performed a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and found “Petitioner indicates throughout his petition that he has not sought relief in the state courts for his claim.” (Doc. 5 at 3.) Furthermore, the magistrate judge observed that Petitioner failed to name a proper respondent, which also “requires dismissal of his habeas petition for lack of jurisdiction.” (*Id.*) Therefore, the magistrate judge recommended the Court dismiss the petition “without prejudice for failure to exhaust state remedies and failure to name a proper respondent.” (*Id.* at 4.)

The Court served the Findings and Recommendations on Petitioner and notified him that any objections were due within 21 days. (Doc. 5 at 4.) The Court advised him that the “failure to

1 file objections within the specified time may result in the waiver of rights on appeal.” (*Id.*, citing
2 *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did not file objections,
3 and the time to do so has passed.

4 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this
5 case. Having carefully reviewed the matter, the Court concludes the Findings and
6 Recommendations are supported by the record and proper analysis.

7 In addition, the Court declines to issue a certificate of appealability. A state prisoner
8 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of
9 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
10 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of
11 appealability is 28 U.S.C. § 2253, which provides as follows:

12 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
13 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

14 (b) There shall be no right of appeal from a final order in a proceeding to test
15 the validity of a warrant to remove to another district or place for commitment or
16 trial a person charged with a criminal offense against the United States, or to test
the validity of such person's detention pending removal proceedings.

17 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

18 (A) the final order in a habeas corpus proceeding in which the
19 detention complained of arises out of process issued by a State
court; or

20 (B) the final order in a proceeding under section 2255.

21 (2) A certificate of appealability may issue under paragraph (1) only if the
22 applicant has made a substantial showing of the denial of a constitutional
right.

23 (3) The certificate of appealability under paragraph (1) shall indicate which
24 specific issue or issues satisfy the showing required by paragraph (2).

25 Thus, if a court denies a petitioner’s petition, the court may only issue a certificate of
26 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
27 28 U.S.C. § 2253(c)(2).

28 To make a substantial showing, Petitioner must establish that “reasonable jurists could

1 debate whether (or, for that matter, agree that) the petition should have been resolved in a
2 different manner or that the issues presented were ‘adequate to deserve encouragement to proceed
3 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
4 880, 893 (1983)). In the present case, the Court finds Petitioner did not make the required
5 substantial showing of the denial of a constitutional right to justify the issuance of a certificate of
6 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not
7 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
8 proceed further. Thus, the Court declines to issue a certificate of appealability.

9 Based upon the foregoing, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued on November 25, 2024, (Doc. 5), are
11 **ADOPTED** in full.
- 12 2. The petition for writ of habeas corpus is **DISMISSED** without prejudice.
- 13 3. The Clerk of Court is directed to enter judgment and close the case.
- 14 4. The Court declines to issue a certificate of appealability.

15 This order terminates the action in its entirety.

16
17 IT IS SO ORDERED.

18 Dated: **January 7, 2025**


UNITED STATES DISTRICT JUDGE